



March 15, 2002

U.S.-CHINA COMMISSION

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Honorable Michael G. Oxley
Chairman
Financial Services Committee
U.S. House of Representatives
Room 2129 Rayburn Building
Washington, DC 20515-6050

Honorable John J. LaFalce
Ranking Member
Financial Services Committee
U.S. House of Representatives
Room 2129 Rayburn Building
Washington, DC 20515-6050

Dear Chairman Oxley and Ranking Member LaFalce:

Congress created the bipartisan, twelve-member United States-China Security Review Commission ("the Commission") in October 2000 for the purpose of monitoring, investigating and reporting on the national security implications of the bilateral trade and economic relationship between the U.S. and the People's Republic of China. The Commission is charged with delivering its first report to the Congress in June 2002, along with its recommendations for legislative or executive action. We have also been asked to alert Congress to any concerns or recommendations we may develop in advance of submitting our report, where appropriate.

Over the past ten months, the Commission has dedicated considerable attention to the extent to which Chinese companies are raising funds in U.S. capital markets and the relationship of this to U.S. national security interests. As part of this review, we have examined the presence of Chinese companies in U.S. markets that are doing business in terrorist-sponsoring or other U.S.-sanctioned countries. While the results of our full investigation will be presented in our first report to the Congress in June, we have thus far agreed, with Commissioner Reinsch dissenting, to one item for legislative action that we would like to recommend to you.

Specifically, the Commission recommends the legislative codification of disclosure guidelines announced by then-Acting SEC Chairman Laura Unger in correspondence to Representative Frank Wolf on May 8, 2001. That correspondence, a copy of which is attached, stated "[t]he fact that a foreign company is doing material business with a country, government, or entity on OFAC's [the Treasury Department's Office of Foreign Assets Control] sanctions list is, in the SEC's staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company." As a result, the letter continued, the SEC "will seek information from registrants about material business in, or with, countries, governments, or entities with which U.S. companies would be prohibited from doing business under economic sanctions



administered by OFAC," and make this information available to the investing public.

Despite this guidance, it is unclear to what extent it reflects current SEC policy. During SEC Chairman Harvey Pitt's confirmation hearing, he expressed some hesitation about this interpretation of materiality. Legislative enactment of the disclosure guidelines set forth in Acting Chairman Unger's letter would codify that interpretation and ensure that this policy is enforced by the SEC.

It is the view of this Commission that a foreign registrant's material business operations in terrorist-sponsoring and other U.S.-sanctioned states could constitute a U.S. security concern and would constitute a material risk that should be disclosed to U.S. and other investors. Some mutual funds and other investors may also wish to be informed of any business activities by foreign registrants in U.S.-sanctioned countries so they can decide whether or not to invest. It is useful to point out that, with some exceptions, U.S. companies are prohibited from doing business in countries under sanctions regimes administered by OFAC.

In the wake of September 11 and the sudden Enron collapse, there is a growing recognition of the need for strengthened disclosure, transparency and accountability in the conduct of the markets. We hope you will consider this important new dimension of material risk to U.S. investors and take action to address this issue through codification of the Unger letter's disclosure guidelines.

We greatly appreciate your consideration of this recommendation. The Commission plans to continue its examination of this important issue and will forward to the Committee any other appropriate ideas we may develop for legislative action in this area.

The Commission very much welcomes your thoughts on this and related issues as we move forward.

Sincerely,

Patrick A. Mulloy
Acting Chairman

Attachment

cc: Sen. Daschle
Sen. Lott
Rep. Hastert
Rep. Gephardt